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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
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8 ALAN STIMMELL and PAMELA  
9 STIMMELL,

CASE NO. CV F 12-0155 LJO BAM

10 Plaintiffs,

**ORDER ON MOTION TO CHALLENGE  
AWARDED COSTS**  
(Doc. 66.)

11  
12 vs.  
13

14 JUAN MORALES, FRANK NAVARRO,  
15 and LUKE POWELL,  
16

17 Defendants.  
18

19 **INTRODUCTION**

20 Plaintiffs Alan and Pamela Stimmell ("Stimmells") challenge \$1,989.35 costs awarded  
21 to defendants<sup>1</sup> for daily trial transcripts. Defendant agents filed no timely papers to oppose the  
22 Stimmells' motion to challenge the award of daily transcript costs. This Court considered the  
23 Stimmells' motion to challenge the award of costs on the record and VACATES the December  
24 4, 2013 hearing, pursuant to Local Rule 230(c), (g). For the reasons discussed below, this  
25 Court GRANTS the Stimmells' motion to challenge the award of daily transcript costs and  
26 DENIES defendant agents an award of daily transcript costs.

27  
28 <sup>1</sup> Defendants are Juan Morales, Frank Navarro ("Agent Navarro") and Luke Powell, at relevant  
times were law enforcement agents with the California Department of Justice ("DOJ"), and will be referred to  
collectively as "defendant agents."

1 **BACKGROUND**

2 In late August and early September 2013, this Court conducted a jury trial on the  
3 Stimmells' unreasonable search and seizure claims against defendant agents. The jury's verdict  
4 found that defendant agents did not unreasonably seize the Stimmells and did not unreasonably  
5 search their home. Judgment in favor of defendant agents and against the Stimmells was  
6 entered on September 4, 2013.

7 With their bill of costs, defendant agents requested:

8 1. \$1,558.20 for realtime rough drafts at \$2.10 per page, a rate based on both sides  
9 ordering daily transcripts;

10 2. \$417.85 for realtime rough drafts at \$3.05 per page, a rate based on only  
11 defendant agents' ordering daily transcripts for selected proceedings; and

12 3. \$16.50 for 15 pages of testimony of Agent Navarro at a rate of \$1.10 per page.

13 In response to defendant agents' bill of costs, the clerk taxed or awarded defendant agents  
14 \$1,989.35 for "printed or electronically recorded transcripts obtained for use in the case." The  
15 clerk awarded without explanation \$3.20 less than the \$1,992.55 requested by defendant  
16 agents.

17 **DISCUSSION**

18 The Stimmells contend that defendant agents are not entitled to costs for daily  
19 transcripts.

20 F.R.Civ.P. 54(d)(1) provides in part: "Unless a federal statute, these rules, or a court  
21 order provides otherwise, costs – other than attorney's fees – should be allowed to the  
22 prevailing party." A "party in whose favor judgment is rendered is generally the prevailing  
23 party for purposes of awarding costs under Rule 54(d)." *d'Hedouville v. Pioneer Hotel Co.*,  
24 552 F.2d 886, 896 (9th Cir. 1977). F.R.Civ.P. 54(d)(1) "generally grants a federal court  
25 discretion to refuse to tax costs in favor of the prevailing party." *Crawford Fitting Co. v. J. T.*  
26 *Gibbons, Inc.*, 482 U.S. 437, 442, 107 S.Ct. 2494 (1987).

27 28 U.S.C. § 1920(2) permits a taxation or award of costs for "[f]ees for printed or  
28 electronically recorded transcripts necessarily obtained for use in the case."

1 The Stimmells acknowledge defendant agents as prevailing parties but challenge the  
2 need for daily transcripts.

3 The "extra cost of obtaining a trial transcript on an expedited basis is not taxable unless  
4 prior court approval of expedition has been obtained or the special character of the litigation  
5 necessitates expedited receipt of the transcript." *Fogleman v. ARAMCO (Arabian American*  
6 *Oil Co.)*, 920 F.2d 278, 286 (5th Cir. 1991). "To award the cost of daily transcripts, the court  
7 must find that they were not obtained primarily for the convenience of the parties but were  
8 necessarily obtained for use in this case." *Holmes v. Cessna Aircraft Co.*, 11 F.3d 63, 64 5th  
9 Cir. 1994) (internal quotations and citations omitted). "[D]aily trial transcript costs should not  
10 be awarded absent court approval prior to the trial." *Manildra Mill. Corp. v. Ogilvie Mills,*  
11 *Inc.*, 76 F.3d 1178, 1184 (Fed. Cir. 1996). "However, a district court may overlook the lack of  
12 prior approval if the case is complex and the transcripts proved invaluable to both the counsel  
13 and the court." *Manildra Mill*, 76 F.3d at 1184.

14 The Stimmells argue that an award of daily transcripts is unwarranted in that:

- 15 1. Trial was neither complex nor lengthy;
- 16 2. Trial testimony was expeditious and required less than four days;
- 17 3. Jury instructions were agreed upon;
- 18 4. There were no motions in limine;
- 19 5. Exhibits were joint;
- 20 6. Daily transcripts served primarily to convenience the parties;
- 21 7. Defendant agents failed to seek prior approval of daily transcripts as a  
22 recoverable cost; and
- 23 8. The parties did not agree that daily transcripts would be a recoverable cost.

24 Defendant agents fail to oppose the Stimmells' valid points that daily transcripts were  
25 unnecessary. This Court construes defendant agents' failure to challenge the Stimmells' points  
26 as defendant agents' concession that an award of daily transcripts is unwarranted. The record  
27 reveals nothing to necessitate daily transcripts, which served chiefly to convenience the parties.  
28 As such, defendant agents are not entitled to daily transcript costs.

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IT IS SO ORDERED.

**/s/ Lawrence J. O'Neill**  
UNITED STATES DISTRICT JUDGE